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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

JUN 01 2017

DOCKETED BY

COMMISSIONERS
TOM FORESE - CHAIRMAN
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD W. DUNN

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET NO. E-01345A-16-0036
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE COMPANY	DOCKET NO. E-01345A-16-0123

ConservAmerica's Reply Brief

June 1, 2017

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REP America d/b/a/ ConservAmerica ("ConservAmerica") submits this reply brief, responding to certain arguments made by SWEEP, AARP, the Electrical Districts, Mr. Woodward, and Mr. Gayer. These parties' objections to the Settlement Agreement are without merit and should be rejected.

I. The settlement process was fair and appropriate.

The Electrical Districts and Mr. Woodward criticize the settlement process. For example, ED8 & McMullen point to Staff's and RUCO's litigation positions, and suggest that it was inappropriate for them to settle.[1] They ask "How does RUCO or any other settling party know what would happen if this case were fully litigated?"[2] Indeed—this is called litigation risk, and parties settle because they don't know what the outcome will be. Staff and RUCO are sophisticated parties represented by experienced counsel. Staff and RUCO would therefore understand that it would be unlikely that all of their litigation positions would be adopted by the Commission. Director Tenney for RUCO and Director Abinah for Staff clearly explained why they signed the settlement, and that they believed the result is just and reasonable.[3] ED8 & McMullen may have a different assessment of the litigation risks, but it is for the leadership of Staff and RUCO to make those assessments and decide whether to join the settlement, just as ED8 & McMullen was free to decide whether to join the settlement or not.

Notably, while ED8 & McMullen criticize Staff and RUCO for moving from their litigation positions, they offered no substantive testimony on revenue requirement, or any issue for that matter. If ED8 & McMullen believe that some other revenue requirement should be adopted, it is up to them to present evidence in support of that position.

ED8 & McMullen demand a "full evidentiary proceeding on the merits".[4] They received one. All of the pre-settlement testimony was admitted into the record, and ED8 & McMullen were

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[1] ED8/McMullen Br. at 8.

[2] Id. at 10.

[3] Tr. 1986:18 to 1088:19 and 1991:18 to 1993:16 (Tenney) and Exhibit 5-13 Abinah Settlement Direct Testimony at 18-19.

[4] Id. at 11:21.

free to cross-examine witnesses on that testimony or to raise any specific substantive objections to the settlement revenue requirement. They did not do so.

Nor have ED8 & McMullen presented evidence that Staff and RUCO would revert to their pre-settlement litigation positions if the settlement were rejected; to the contrary, it is common for parties, including Staff and RUCO, to adjust their positions through subsequent rounds of testimony as new information and arguments are presented. And even if Staff and RUCO retained their pre-settlement positions, there is no guarantee those positions would be adopted.

The remaining electrical districts (ED6 et al.) take an even more extreme position. They argue that the settlement was tainted by unequal bargaining power. They offered no testimony in support of this complaint. In reality, there was no shortage of bargaining power in the settlement room. Director Abinah testified that Staff had the resources to fully litigate this case, if it believed that was the best option.[5] Nor was Staff alone—many parties filed extensive revenue requirement testimony, including RUCO, EFCA, Wal-Mart, Freeport, and the Federal Executive Agencies.[6] Collectively, these parties have resources equal to or greater than APS. Other parties such as Vote Solar, ACAA and SWEEP were represented by legendary public interest attorney Tim Hogan, nobody's idea of a pushover. The districts themselves were represented by one of the largest law firms in the Arizona, and as utilities themselves have the knowledge and resources to produce revenue requirement testimony, if they chose to do so. They did not. In sum, there was plenty of firepower in the settlement room; APS did not overawe anyone.

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[5] Tr. at 1264:17 to 1266:2.

[6] Exhibit RUCO-1, Revenue Requirement Testimony of John Cassidy; Exhibit RUCO-2, Revenue Requirement Testimony of Frank Radigan, Public, Exhibit RUCO-5, Revenue Requirement Testimony of Lon Huber; Exhibit EFCA-1 Cost of Capital Testimony of David Garrett; Exhibit EFCA-1A, Depreciation Testimony of David Garrett; Exhibit EFCA-2, Revenue Requirement Testimony of Mark Garett, Public; Exhibit Wal-Mart-1, Revenue Requirement Testimony of Gregory W. Tillman; Exhibit AECC-1, Revenue Requirement Testimony of Kevin Higgins, Public; Exhibit FEA-1, Revenue Requirement Testimony of Brian Andrews; Exhibit FEA-2, Revenue Requirement Testimony of Michael Gorman.

Mr. Woodward takes the most extreme position of all. He argues that RUCO does not represent residential ratepayers, and instead produces "sophistries, spin and outright falsehood"[7]. And he says that Mr. Abinah for Staff is "elitist" and has "pro-APS bias".[8] These allegations come without any proof, much less the heavy proof needed to impeach the credibility of the public servants in Staff and RUCO. While ConservAmerica disagrees with Mr. Woodward on many, many things, it believes that Mr. Woodward is acting on his sincere beliefs. He should accord the same courtesy to the other parties to this case. In any event, the ALJ observed the demeanor of Mr. Tenney and Mr. Abinah, and she can decide for herself whether they were sincere.

II. The settlement rate design should be approved as a modest step to a more modern and fair rate design.

A. Basic Service Charge.

AARP and SWEEP argue that the $15 basic service charge for the R-Basic rate should be rejected. SWEEP points to cost causation,[9] but SWEEP's basic service method is not the only way to look at cost causation. There is no debate that APS's fixed costs exceed any of the proposed basic service charges. How much fixed cost to include in the basic service charge is a policy judgment for the Commission. Here, policy factors point in favor of the Settlement Agreement's basic service charge. In an era of declining kWh sales, placing additional fixed costs into the kWh charge will only enhance the growing inequities as more affluent customers adopt new technologies to limit or eliminate their kWh, while other customers are left behind to bear the costs.

AARP argues that a reduced basic service charge would be revenue-neutral.[10] That's true if only test year billing determinants are considered. But as kWh sales levels continue to fall, costs will go unrecovered, so it will not be revenue neutral to APS. And in the next rate case,

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[7] Woodward Br. at 39.

[8] Woodward Br. at 40.

[9] SWEEP Br. at 8.

[10] AARP Br. at 6.

those same unrecovered fixed costs will need to be recovered from customers. In a time when some customers have little or no net kWh usage, but still cause significant fixed costs, an adequate basic service charge for traditional rate designs is needed to ensure fairness.

SWEEP points to various examples of how the increased basic service charge impacts R-Basic and R-Basic Large customers.[11] The higher basic service charge for those rates is intended to encourage customers to select other, more modern rate designs, such as TOU or demand rates, which will benefit all customers by reducing costs and emissions.[12] SWEEP also argues that the higher basic service "results in customers losing control over their utility bill".[13] ConservAmerica agrees that customer control over the bill is beneficial, but the control must come from changes that reduce costs. If a customer selects a modern TOU or demand rate, the customer will have multiple ways to control their bill, as SWEEP witness Schlegel conceded.[14] Thus, the Settlement Agreement is consistent with customer control over the bill.

B. Ninety day trial period for new customers.

SWEEP, AARP and Mr. Gayer object to the 90 day trial period. AARP contends that public comment is against "mandatory demand charges"[15] and that "**No** public utility commission in the country has forced residential customers onto a demand rate, while refusing to allow a customer to choose a basic rate plan, even for a mandatory trial period."[16] But no customer will be "forced" onto a demand rate if the Settlement Agreement is approved. To the contrary, even for new customers covered by the 90 day trial. They can select a TOU rate, or if they qualify, R-XS as well as various demand options, such as R-2, R-3 and R-Tech (if qualified).[17]

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[11] SWEEP Br. at 11-12.

[12] See ConservAmerica Br. at 2:7-14.

[13] SWEEP Br. at 7:3

[14] Tr. at 1151:4 to 1152:21.

[15] AARP Br. at 8:1-3.

[16] AARP Br. at 7:24 to 8:2.

[17] Exhibit APS-29, Settlement Agreement, Section 19.1.

SWEEP argues that "all customers should be able to choose their rate from among the options they are eligible for...."[18] Similarly, AARP contends that "customers—not the utility company—should choose from all available rate plans."[19] These quotes reveal that even AARP and SWEEP agree that there must be some limits on what rate plans are available.

Here, the Settlement Agreement proposes a sensible limit. It applies to new customers, and only for a limited time. It allows the customers to gain experience with more modern rate designs (TOU and demand) that will produce cost savings and emissions reductions benefiting all customers.

Mr. Woodward challenges the very idea that TOU and demand rates are "modern", because they existed in the past.[20] But "modern" means "related to the present or recent times as opposed to the remote past" and "characterized by or using the most up-to-date techniques, ideas, or equipment."[21] Here, TOU and demand rates are modern because they are being applied on a larger scale than before, and because they meet the challenges of a grid dealing with new technologies like rooftop solar that reduce billed kWh. As such, TOU and demand rates are the "most up-to-date techniques" for dealing with this challenge. Mr. Walker explained that "innovative ideas are often rejected early, only to be realized later", pointing out such decidedly modern ideas as electric cars, in car navigation systems, active suspension systems, social networks, and cloud-based computing systems.[22]

Mr. Gayer takes a different approach. He argues that the Commission would violate due process if it adopted the 90 day period, due to a lack of notice.[23] But there has been adequate notice, and in any event, there is no due process requirement for notice to ratepayers. The public

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[18] SWEEP Br. at 17:1-2 (emphasis added).

[19] AARP Br. at 7:11-12 (emphasis added).

[20] Tr. at 983:11 to 984:17.

[21] https://en.oxforddictionaries.com/definition/modern

[22] Exhibit ConservAmerica-2, Rate Design Direct Testimony of Paul Walker, Feb. 3, 2017, at 15-17.

[23] Gayer Br. at 10.

notice in this case stated that "THE FINAL RATES APPROVED BY THE COMMISSION MAY BE HIGHER, LOWER, OR DIFFERENT THAN THE RATES PROPOSED BY APS OR BY OTHER PARTIES."[24] This notice was mailed to all APS customers and published in various newspapers. Thus, all APS customers were made aware that different rate proposals could be considered or approved. Additional notices were published for each public comment session.[25] Further, the Settlement Agreement and settlement testimony are available to anyone interested on eDocket, and the hearing was broadcast over the internet.

Thus, the notice more than satisfied any due process requirements. But there are no applicable due process requirements here. "Federal courts have consistently determined that utility customers do not have a vested property interest in the setting of utility rates sufficient to invoke the procedural protections of the Fourteenth Amendment.... Several States have also declined to recognize a utility customer's due process property interest in the setting of utility rates." *Appeal of Office of Consumer Advocate*, 803 A.2d 1054, 1059 (N.H. 2002). Likewise, Arizona law leaves the issue of notice up to the Commission's discretion. *See Arizona Corp. Comm'n v. Tucson Ins. & Bonding Agency*, 3 Ariz. App. 458, 463, 415 P.2d 472, 477 (1966)(In a CC&N case, "the commission was not required to give such notice, there being no constitutional or statutory provision requiring"); *Walker v. De Concini*, 86 Ariz. 143, 148, 341 P.2d 933, 937 (1959)(if no statute requires notice, "the matter of notice is within the discretion of the Commission"). In the same way, the Commission's rules leave the matter of notice in the discretion of the Commission or the ALJ. A.A.C. R14-2-105(B)("The form of and manner of such notice shall be as the Commission may direct by procedural order"); R14-3-109(B)("Publication of notice of hearings shall be as required by law or as ordered by the Commission in a particular proceeding. If publication is required, affidavit of publication shall be filed with the Arizona

[24] Sept. 13, 2016 affidavit of service, http://docket.images.azcc.gov/0000173300.pdf

[25] http://docket.images.azcc.gov/0000178919.pdf ; http://docket.images.azcc.gov/0000178699.pdf ; http://docket.images.azcc.gov/0000178512.pdf ; http://docket.images.azcc.gov/0000178205.pdf

Corporation Commission at or prior to the time of initial hearing.") Therefore, all legal requirements regarding notice have been met.

III. The AZ Sun II program should be approved.

ConservAmerica's brief explained how rooftop solar in Arizona benefits the wealthy, while the poor are left behind.[26] The AZ Sun II program in the Settlement Agreement starts to address this inequity; it is focused on low and moderate income Arizonans.

Mr. Gayer argues that AZ Sun II creates "unfair competition" and that it "will tend to drive solar installers out."[27] In support of this conclusion, Mr. Gayer cites a public comment. But public comment is not evidence, and public comment and other items in the docket file "shall not be considered unless same is offered and accepted in evidence."[28] Moreover, Mr. Gayer's view is not shared by organizations (SEIA, EFCA and ASDA) representing actual solar companies, who all support the settlement. Further, the AZ Sun II program is targeted directly at low and moderate income Arizonans, a market that is very underserved. Thus, the program will have little, if any, impact on competition.

Mr. Gayer points to his Exhibit 17 to show that the AZ Sun II costs are discriminatory. Exhibit 17 is deeply flawed. It assumes that the $10 to $15 million in AZ Sun II costs will be recovered in full annually from customers. But the $10 to $15 million is "direct capital costs" that are invested by APS.[29] These are APS funds that may be recovered though rate base, and are not annual costs to the customer.[30] Moreover, to the extent these costs are included in revenue requirement, only a portion of the revenue requirement is recovered from residential customers. In short, the impact on residential customers will be small, while the benefits are great.

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[26] ConservAmerica Br. at 4-5.

[27] Gayer Br. at 14:17-23.

[28] A.A.C. R14-2-109(Z).

[29] Exhibit APS-29, Settlement Agreement, Section 28.2(d). In addition, the carrying costs of the capital investment may be recovered in the Renewable Energy Adjustment Clause between rate cases under Section 28.2(a).

[30] Exhibit APS-29, Settlement Agreement, Section 28.2(b).

IV. Conclusion.

The settlement process was fair and open. The Settlement Agreement is a good first step towards a modern rate design that will meet the challenges of the new technologies changing the electric industry. The AZ Sun II program will expand access to rooftop solar to low and moderate income Arizonans, who have mostly been left behind by the solar boom. ConservAmerica asks the Commission to approve the Settlement Agreement in full.

RESPECTFULLY SUBMITTED this 1st day of June, 2017.

Snell & Wilmer, L.L.P.

By _____

Timothy J. Sabo
One Arizona Center
400 East Van Buren Street
Phoenix, Arizona 85004

Attorney for REP America d/b/a/ ConservAmerica

Original and 13 copies of the foregoing
filed this 1st day of June 2017, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered/mailed/e-mailed
this 1st day of June, 2017, to:

Teena Jibilian,
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
400 West Congress
Tucson, Arizona 85701

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Elijah Abinah, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
legaldiv@azcc.gov
JXHatch-miller@azcc.gov
tbroderick@azcc.gov
chains@azcc.gov
wvancleve@azcc.gov
eabinah@azcc.gov
tford@azcc.gov
evanepps@azcc.gov
cfitzsimmons@azcc.gov
kchristine@azcc.gov
mscott@azcc.gov
Consented To Service By Email

Thomas A. Loquvam
Thomas L. Mumaw
Melissa M. Krueger
Pinnacle West Capital Corporation
P.O. Box 53999, MS 8695
Phoenix, AZ 85072
Thomas.loquvam@pinnaclewest.com
Thomas.mumaw@pinnaclewest.com
Melissa.kruegar@pinnaclewest.com
Amanda.ho@pinnaclewest.com

Debra.orr@aps.com
Consented To Service by Email

Patrick Black
Fennemore Craig, PC
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016
pblack@fclaw.com
khiggins@energystrat.com
Consented To Service By Email

Greg Eisert, Director
Steven Puck, Director
Government Affairs
Sun City Homeowners Association
gregeisert@gmail.com
steven.puck@cox.net
Consented To Service By Email

Timothy M. Hogan
Arizona Center for Law in the Public Interest
202 E. McDowell Road, Suite 153
Phoenix, Arizona 85004
thogan@aclpi.org
ken.wilson@westernresources.org
schlegelj@aol.com
ezuckerman@swenergy.org
bbaatz@aceee.org
briana@votesolar.org
cosuala@earthjustice.org
dbender@earthjustice.org
cfitzgerrell@earthjustice.org
Consented To Service By Email

Meghan H. Grabel
Osborn Maledon, PA
2929 North Central Avenue
Phoenix, Arizona 85012
mgrabel@omlaw.com
gyaquinto@arizonaic.org
Consented To Service By Email

Patricia Ferre
P.O. Box 433
Payson, Arizona 85547
pFerreact@mac.com
Consented To Service By Email

Richard Gayer
526 W. Wilshire Drive
Phoenix, Arizona 85003
rgayer@cox.net
Consented To Service By Email

Warren Woodward
200 Sierra Road
Sedona, Arizona 86336
w6345789@yahoo.com
Consented To Service By Email

Anthony L. Wanger
Alan L. Kierman
Brittany L. DeLorenzo
IO Data Centers, LLC
615 North 48th Street
Phoenix, Arizona 85008

Craig A. Marks
Craig A. Marks, PLC
10645 N. Tatum Blvd., Suite 200-676
Phoenix, Arizona 85028
craig.marks@azbar.org
pat.quinn47474@gmail.com
Consented to Service by Email

Albert Gervenack
Rob Robbins
Sun City West Property Owners & Residents Association
13815 Camino Del Sol
Sun City West, Arizona 85375
Al.gervenack@porascw.org
Rob.robbins@porascw.org
Consented to Service by Email

Tom Harris, Chairman
AriSEIA
2122 W. Lone Cactus Dr., Suite 2
Phoenix, AZ 85027
Tom.harris@ariseia.org
Consented to Service by Email

Cynthia Zwick
Arizona Community Action Association
2700 North 3rd Street, Suite 3040
Phoenix, Arizona 85004
czwick@azcaa.org
khengehold@azcaa.org
Consented To Service By Email

Daniel W. Pozefsky
Chief Counsel
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, AZ 85007

Jason Y. Moyes
Jay I. Moyes
Moyes Sellers & Hendricks
1850 N. Central Ave., Suite 1100
Phoenix, Arizona 85004
jasonmoyes@law-msh.com
jim@harcuvar.com
jimoyes@law-msh.com
Consented To Service By Email

Kurt J. Boehm
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, OH 45202

John William Moore, Jr.
7321 North 16th Street
Phoenix, AZ 85020

Charles Wesselhoft, Deputy County Attorney
Pima County Attorneys' Office
32 North Stone Ave., Suite 2100
Tucson, Arizona 85701
Charles.Wesselhoft@pcao.pima.gov
Consented To Service By Email

Giancarlo G. Estrada
Kamper Estrada, LLP
3030 N. 3rd Street, Suite 770
Phoenix, AZ 85012
gestrada@lawphx.com
kfox@kfwlaw.com
kcrandall@eq-research.com
Consented To Service By Email

Court S. Rich
Rose Law Group PC
7144 E. Stetson Dr., Suite 300
Scottsdale, AZ 85251
crich@roselawgroup.com
hslaughter@roselawgroup.com
Consented To Service By Email

Scott Wakefield
Hienton & Curry, PLLC
5045 N 12th Street, Suite 110
Phoenix, Arizona 85014-3302
swakefield@hclawgroup.com
mlougee@hclawgroup.com
stephen.chriss@wal-mart.com
greg.tillman@wal-mart.com
chris.hendrix@wal-mart.com
Consented To Service By Email

Lawrence V. Robertson, Jr.
210 W. Continental Road, Suite 216A
Green Valley, Arizona 85622
tubaclawyer@aol.com
Consented To Service By Email

Nicholas J. Enoch
Kaitlyn A. Redfield-Ortiz
Emily A. Tornabene
Lubin & Enoch, PC
349 North Fourth Avenue
Phoenix, Arizona 85003

Greg Patterson
Munger Chadwick
916 West Adams, Suite 3
Phoenix, Arizona 85007

Albert H. Acken
Sheryl A. Sweeney
Samuel L. Lofland
Ryley Carlock & Applewhite
One N. Central Avenue, Suite 1200
Phoenix, AZ 85004
aacken@rcalaw.com
ssweeney@rcalaw.com
slofland@rcalaw.com
jjw@krsaline.com
Consented To Service By Email

Thomas A. Jernigan
Karen White
Ebony Payton
Federal Executives Agencies
U.S. Airforce Utility Law Field Support Center
139 Barnes Dr., Suite 1
Tyndall Air Force Base, Florida 32403
Thomas.jernigan.3@us.af.mil
Ebony.payton.ctr@us.af.mil
Andrew.unsicker@us.af.mil
Lanny.zieman.1@us.af.mil
Natalie.cepak.2@us.af.mil
Consented To Service By Email

John B. Coffman
John B. Coffman, LLC
871 Tuxedo Blvd.
St. Louis, Missouri 83119

Ann-Marie Anderson
Wright Welker & Pauole, PLC
10429 South 51st Street, Suite 285
Phoenix, AZ 85004
aanderson@wwpfirm.com
sjenning@aarp.org
aallen@wwpfirm.com
Consented To Service By Email

Robert L. Pickels, Jr.
Sedona City Attorney's Office
102 Roadrunner Dr.
Sedona, Arizona 86336
rpickles@sedonaaz.gov
Consented To Service By Email

Garry D. Hays
Law Offices of Garry D. Hays
2198 E. Camelback Rd., Suite 305
Phoenix, Arizona 85016
ghays@lawgdh.com
Consented To Service By Email

Thomas E. Stewart
Granite Creek Power & Gas LLC
Granite Creek Farms LLC
5316 E. Voltaire Ave.
Scottsdale, AZ 85254
tom@gcfaz.com
Consented To Service By Email

Dennis M. Fitzgibbons
Fitzgibbons Law Offices, PLC
115 E. Cottonwood Lane, Suite 150
P.O. Box 11208
Casa Grande, AZ 85130
denis@fitzgibbonslaw.com
Consented To Service By Email

By
4819-1969-4153